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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,638	03/02/2004	Thomas Kieran Nunan	2550/193	3053

2101 7590 12/15/2005  
BROMBERG & SUNSTEIN LLP  
125 SUMMER STREET  
BOSTON, MA 02110-1618

EXAMINER

SMITH, BRADLEY

ART UNIT	PAPER NUMBER
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2891

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/791,638	Applicant(s) NUNAN ET AL.	
	Examiner Bradley K. Smith	Art Unit 2891	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 15-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-12, 14 and 23-26 is/are rejected.
- 7) ☒ Claim(s) 5, 7 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/2/04, 6/22/05</u> . | 6) <input checked="" type="checkbox"/> Other: <u>search notes</u> .                     |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 15-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/16/05.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 depends on itself (the examiner will treat as if it is dependant on claim 1).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 8-12, 14 and 23-26 rejected under 35 U.S.C. 102(e) as being anticipated by Kenny et al. (US 2004/0200281). With regards to claims 1, 8, 10 and 23, Kenny et al disclose a base layer (710); a device layer (711); an insulator layer (712) between the base layer and the device layer; and a deposited layer (780) having a portion (750) that is spaced from the device layer; the device layer being between the insulator layer and the deposited layers the device layer having structure, the deposited layer forming a cap to seal the structure (see figures 7a-7h) and electrically connecting the sensing structure (782). With regards to claims 2 and 24, Kenny et al. disclose an anchor (770) layer extending from a deposited layer to contact the device layer (see figure 7h). With regards to claim 3, 4, 25 and 26, Kenny et al. disclose the device layer includes circuitry (724) and the circuitry is operable. With regards to claims 6 and 12, air separates the device layer from the deposited layer (750). With regards to claims 9 and 11 the deposited additional layer (785) has a portion that contacts the top surface and the single crystal silicon is a silicon bulk wafer (with an insulator on top). With regards to claim 14, Kenny et al disclose the circuitry (724) contacting a second component (792).

***Allowable Subject Matter***

Claims 5, 7, 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest the deposited layer is germanium (claim 5), the device layer has a top surface with a given material formed thereon the air space separating the given material from the deposited layer (claim 7), the sensing member includes a movable material spaced from the additionally deposited layer by an airspace (claim 13).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley K. Smith whose telephone number is 571-272-1884. The examiner can normally be reached on 10-6.

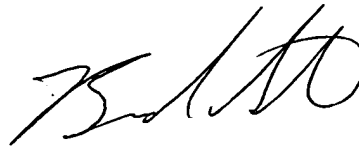
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Baumeister can be reached on 571-272-1722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'B. K. Smith', written in a cursive style.

Bradley K Smith  
Primary Examiner  
Art Unit 2891